

REMARKS

Claims 1-70, 72, and 74-88 are pending for the Examiner's consideration, with claims 1, 72, 82, 85 and 88 being the independent claims. Claims 80 and 81 are amended herein. New claim 88 has been added. Applicant respectfully submits that these amendments introduce no new matter. Applicant respectfully requests entry of the present amendment in view of the Request for Continued Examination ("RCE") filed herewith. Applicant acknowledges with appreciation that claims 3, 4, 6-22, 24-35, 37-70, 78, and 79 remain allowable if rewritten to include all of the limitations of the base and any intervening claims.

Request for Examiner Interview Prior to Further Action

Applicant respectfully requests that the Examiner contact the undersigned prior to issuing any further action in this application other than a Notice of Allowance. Applicant submits that a personal interview would be beneficial in advancing prosecution of the application.

Objection to the Specification

The Examiner objects to the specification in paragraph 1 of the outstanding Office Action because "Cross-references to related applications should be included as the first sentence of the specification." Applicant filed an Application Data Sheet with the above-captioned application, and, in accordance with 37 C.F.R. § 1.76(b)(5), the related application information "need not otherwise be made part of the specification." Nonetheless, to advance prosecution of the present application, the first page of the specification is amended herein to include the related application information.

Rejection Under 35 U.S.C. § 112 ¶ 2

Claims 80 and 81 stand rejected under 35 U.S.C. § 112 ¶ 2 as being indefinite because the phrase "said adjacent faces" lacks antecedent basis. Claims 80 and 81 are amended herein to

depend from claims 82 and 85, respectively, to provide the requisite antecedent basis. Applicant respectfully submits that this amendment overcomes the rejection under § 112 ¶ 2.

Rejection Under 35 U.S.C. § 102(b)

Claims 1, 2, 5, 23, 36, 72, 74-77, and 82-87 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,564,865 to Jansson (“the ‘865 patent”). Applicant respectfully submits that this rejection cannot properly be maintained because the ‘865 patent does not suggest, much less disclose, the subject matter recited in independent claims 1, 72, 82, and 85. In particular, Applicant respectfully submits that the ‘865 patent does not disclose or suggest at least mechanical interlocking between adjacent header units and mechanical interlocking between a header unit and the base.

Mechanical Interlocking Between Adjacent Header Units

The Examiner asserts in the Office Action that the ‘865 patent discloses a “plurality of header units 12 that are mechanically interlocked,” but provides no explanation of any structure that mechanically interlocks the concrete modules disclosed in the ‘865 patent. In particular, as the Examiner may already appreciate, concrete modules 12’ as shown in Figures 11-13 of the ‘865 patent include no mechanical interlocking. The ‘865 patent makes clear at column 6, lines 56-59 that “the front wall 30’ and the lateral walls 32’ including the front ribs 50’, 52’, and the back ribs 54’, 56’, have coplanar top surfaces, as well as coplanar bottom surfaces.” Thus, there is no structure in concrete modules 12’ to provide mechanical interlocking between adjacent concrete modules 12’.

Applicant respectfully submits that there is also no structure in concrete modules 12 to provide mechanical interlocking between adjacent concrete modules 12. As with concrete modules 12’, the lateral walls and ribs have coplanar top surfaces, and the front wall, lateral

walls and ribs have coplanar bottom surfaces (*see* column 4, lines 45-50 of the '865 patent). The coplanar top and bottom surfaces provide no structure that allows concrete modules 12 to be “stacked in a complementary relationship to provide mechanical interlocking” as required by each independent claim. Front wall 30 of concrete module 12 has an upper portion 36 that extends above lateral walls 32. Applicant respectfully submits that upper portion 36 does not provide structure that allows concrete modules 12 to be “stacked in a complementary relationship to provide mechanical interlocking” as required by each independent claim. Upper portions 36 provide a means of stepping back each successive course of concrete modules 12 to thereby place an angle of repose in the wall's exposed face. Upper portion 36 is not in a complementary relationship with any structure on adjacent concrete modules 12, and upper portion 36 does not interlock with anything on an adjacent concrete module. That there is no mechanical interlocking or reliable shear force transfer between the concrete modules of the '865 patent is emphasized by the fact that the vegetation planted within and between the modules helps “to anchor the modules.” (*see* column 4, lines 20-23 of the '865 patent).

For at least the foregoing reasons, Applicant respectfully submits that the '865 patent does not disclose or suggest the subject matter of the independent claims, or the claims depending therefrom. As such, the rejection cannot properly be maintained.

Mechanical Interlocking Between Header Unit And The Base

In making the rejection, the Examiner states that concrete footings 14 shown in Figure 4 “appears to have a lip/flange that would provide a degree of mechanical interlocking between the header unit and the base.” The Examiner has not explained how concrete module 12 is in a complementary relationship with concrete footing 14 to provide mechanical interlocking between concrete module 12 and concrete footing 14. Applicant respectfully submits that to the

extent concrete footing **14** includes a lip/flange, it is not in a complementary relationship with any structure on any adjacent concrete module **12**, and such a lip/flange does not interlock with anything on any adjacent concrete module.

For at least the foregoing reasons, Applicant respectfully submits that the '865 patent does not disclose or suggest the subject matter of the independent claims, or the claims depending therefrom. As such, the rejection cannot properly be maintained.

New Claim 88

New claim 88 is allowable over the cited reference at least because the '865 patent fails to disclose or suggest "a header unit configured to be stacked in a complementary relationship with an adjacent header unit to provide mechanical interlocking between the header unit and the adjacent header unit" as recited in claim 88.


Conclusion

All of the stated grounds of objection and rejection have been properly traversed or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding objections and rejections. Applicant believes that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,
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